

RESOLUTION GRANTING THIRD ROUND SUBSTANTIVE CERTIFICATION #42-09

Middletown Township, Monmouth County

WHEREAS, Middletown Township, Monmouth County, petitioned the Council on Affordable Housing (COAH) for third round substantive certification of a Housing Element and Fair Share Plan addressing its total 1987-2018 affordable housing obligation on December 31, 2008; and

WHEREAS, Middletown's petition was deemed complete on April 13, 2009; and

WHEREAS, Middletown Township published notice of its petition in the *Asbury Park Press* on April 17, 2009, which is a newspaper of general circulation within the county, pursuant to N.J.S.A. 52:27D-313 and N.J.A.C. 5:96-3.5; and

WHEREAS, during the 45-day objection period, which ended May 4, 2009, COAH received an objection from Stephen Eisdorfer Esq., of Hill Wallack, and David N. Kinsey, PP/AICP, of Kinsey & Hand, on behalf of Bamm Hollow, LLC; and Gary E. Fox, Esq., of Fox & Melofchik, on behalf of Mountain Hill, LLC; and

WHEREAS, a settlement was reached between Middletown and Mountain Hill and a developer's agreement was executed between the parties on September 24, 2009; and

WHEREAS, thereafter, on September 24, 2009, Mountain Hill withdrew its objection; and

WHEREAS, a COAH Pre-mediation Report Requesting Additional Information was issued on July 28, 2009;

WHEREAS, mediation commenced on August 25, 2009; and

WHEREAS, mediation was concluded on August 25, 2009; and

WHEREAS, a Mediation Report was issued on September 24, 2009, as part of the Township's Compliance Report; and

WHEREAS, the mediation between Bamm Hollow and Middletown did not result in a settlement and the mediator does not believe that further mediation before COAH would result in a settlement being reached; and

WHEREAS, the mediator finds that there are not any outstanding issues of material fact which necessitate referral to the Office of Administrative Law; and

WHEREAS, Middletown Township's fair share plan addresses its 154-unit rehabilitation obligation, 1,561-unit prior round obligation and 233-unit net projected growth share obligation pursuant to Appendix F of N.J.A.C. 5:97; and

WHEREAS, Middletown Township's plan proposes to address its 154-unit rehabilitation obligation with 28 credits for rehabilitated units and a 126-unit municipal rehabilitation program; and

WHEREAS, Middletown Township's plan proposes to address 1,225 units of its 1,561-unit prior round obligation with 133 prior cycle credits for built units, which consist of 101 credits without controls units, two affordable scattered site family sale units, 26 age-restricted rental units in King's Row Senior Citizen Development, and a four-bedroom group home; 964 post-1986 credits and 127 rental bonuses for built, transferred or approved projects, which include 50 RCA credits through a completed RCA with Highlands, 150 RCA credits through a completed RCA with Long Branch, 75 RCA credits through a completed RCA with Union Beach, 45 RCA credits through a completed RCA with Red Bank, 180 RCA credits through a completed RCA with Asbury Park, 12 bedrooms and 12 rental bonuses for three completed group homes, 29 completed accessory apartments, 28 family rental units and 28 rental bonuses in the Beacon Place inclusionary development, 30 family rental units and 30 rental bonuses in the

Chapel Hill inclusionary development, six family rental units and six rental bonuses in the Park Place inclusionary development, 16 family rental units and 16 rental bonuses in the Regency Park inclusionary development, 18 family rental units and 18 rental bonuses in the Harmony Glen inclusionary development, 12 family rental units and 12 rental bonuses in the Elgohail residential over commercial project, five family rentals and five rental bonuses and seven sale units in the Wallace Point 100 percent affordable project, 60 age-restricted rentals in the Luftman Pavilion 100 percent affordable project, 180 age-restricted rentals in the Conifer 100 percent affordable project, 23 affordable scattered site family sale units, 24 family sale units in Laurel Greene inclusionary development, 13 family sale units in Cottage Gate inclusionary development, and two family sale units in Browns Landing inclusionary development; and

WHEREAS, Middletown Township's plan proposes to address its remaining 336-unit prior round obligation with 80 proposed family rental units and 80 rental bonuses in the Mountain Hill inclusionary development, 75 proposed family rental units and 75 rental bonuses in the Avaya inclusionary development, eight proposed group home bedrooms in two buildings with Housing United Services (HUS) and Monarch Housing and eight rental bonuses, a four bedroom group home with Community Options and four rental bonuses, and two units from the Township's Accessory Apartment Program; and

WHEREAS, Middletown Township's plan proposes to address its 233-unit projected growth share obligation with two credits for two approved family sale units in the Stavola inclusionary development, 72 proposed family rental units in the Taylor inclusionary development, 35 proposed family sale units in the Steiner & Frustacci inclusionary development, nine proposed family sale units in the Meadowview inclusionary development, nine proposed family sale units in the 199 Laurel Ave (Steiner) inclusionary development, eight proposed family sale units in the Atlantic Pier inclusionary development, a proposed 21-unit Accessory Apartment Program, a proposed ten-unit Market to Affordable Program, 10 special needs bedrooms and three rental bonuses in a proposed supportive housing facility, 22 proposed units in three identified residential over commercial projects, 15 sale units in a proposed municipally sponsored scattered site project, 57 family rental and 58 age-restricted sale units in a future 115-

unit municipally sponsored project, and seven future municipally sponsored residential over commercial units; and

WHEREAS, pursuant to N.J.A.C. 5:97-3.2(a)4, Middletown has provided implementation schedules that set forth detailed timetables that demonstrate a realistic opportunity as defined under N.J.A.C. 5:97-1.4 and a timetable for the submittal of all information and documentation required by N.J.A.C. 5:97-6.7 and N.J.A.C. 5:97-6.10 for the proposed Coe Supportive/Special Needs project, the seven-unit future municipally sponsored residential over commercial program, the 15-unit future scattered site municipally sponsored units, and the 115-unit municipally sponsored 100 percent affordable project; and

WHEREAS, pursuant to N.J.A.C. 5:97-3.6(a)3ii., in the event the Supportive/Special Needs project is not constructed in accordance with the construction schedule, Middletown may lose the rental bonuses; and

WHEREAS, Middletown Township shall submit documentation of ownership and demonstration of site suitability to COAH once the sites for the municipally sponsored projects are acquired; and

WHEREAS, Middletown Township's plan results in a 105-unit surplus from the proposed future municipally sponsored projects; and

WHEREAS, Middletown Township submitted a waiver request with its petition from N.J.A.C. 5:80-26.3(b) for the bedroom distribution for the affordable units that will be constructed at the 100 percent affordable Wallace Point development; and

WHEREAS, the Wallace Point project received final approvals on October 17, 2007, for twelve affordable units, but is not yet constructed; and

WHEREAS, instead of providing a bedroom distribution in accordance with N.J.A.C. 5:80-26.3(b), the project will consist of six one-bedroom units and six two-bedroom units; and

WHEREAS, the waiver meets the requirements of N.J.A.C. 5:96-15.2(a) in that the strict application of the rule would create an unnecessary environmental hardship as the bedroom mix was necessary due to extensive environmentally-constrained areas on the property; and

WHEREAS, if three bedroom units were to be constructed on the site, the total number of affordable units would have to be reduced on the site, due to the site's very limited building area; and

WHEREAS, the waiver fosters the production of affordable housing because the units are already approved, and to require a new design of the buildings to meet the three-bedroom requirement would create a financial hardship for the Township and the developer; and

WHEREAS, the waiver fosters the intent, if not the letter of the rules, in that the Township has already made up any deficiency of three-bedroom units that would be required under the regulation through its 20 existing scattered site units, which mainly consist of three bedroom units; and

WHEREAS, Middletown Township's Fair Share Plan provides a mix of housing options, including a mix of one, two and three-bedroom for sale and rental units; and

WHEREAS, a COAH task force met on September 30, 2009, and recommends approval of the bedroom distribution waiver for the Wallace Point project; and

WHEREAS, pursuant to N.J.A.C. 5:96-6.2(a)2, on September 24, 2009, COAH issued a Mediation Report and a Compliance Report (Exhibit A) recommending approval of Middletown Township's petition for third round substantive certification; and

WHEREAS, there was a 14-day period to submit comments to the COAH Compliance Report and Mediation Report pursuant to N.J.A.C. 5:96-6.2(b) and COAH received comments from Stephen Eisdorfer Esq., of Hill Wallack, on behalf of Bamm Hollow that have been responded to in a separate report dated October 8, 2009 (Exhibit B); and

WHEREAS, the comments received from Bamm Hollow do not alter the COAH Compliance Report.

NOW THEREFORE BE IT RESOLVED that, for the reasons set forth above, Middletown Township's waiver request from N.J.A.C. 5:80-26.3(b) for the bedroom distribution for the affordable units that will be constructed at Wallace Point is granted; and

BE IT FURTHER RESOLVED the Housing Element and Fair Share Plan submitted by Middletown Township comports to the standards set forth at N.J.S.A. 52:27D-314 and meets the criteria for third round substantive certification pursuant to N.J.A.C. 5:96-6.3; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.3(a) and after having reviewed and considered all of the above, COAH hereby grants third round substantive certification to Middletown Township; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.3(e), Middletown Township shall adopt all implementing Fair Share Ordinances within 45 days of the grant of substantive certification; and

BE IT FURTHER RESOLVED that if Middletown Township fails to timely adopt its Fair Share Ordinances, COAH's grant of substantive certification shall be void and of no force and effect; and

BE IT FURTHER RESOLVED that Middletown shall submit all Fair Share Ordinances to COAH upon adoption; and

BE IT FURTHER RESOLVED that the agreement between HUS and Middletown must be executed within 45 days after the grant of substantive certification and submitted to COAH; and

BE IT FURTHER RESOLVED that Middletown shall comply with COAH monitoring requirements as set forth in N.J.A.C. 5:96-11, including reporting Middletown's actual growth pursuant to N.J.A.C. 5:97-2.5; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-10.1, COAH shall conduct biennial plan evaluations upon substantive certification of Middletown's Housing Element and Fair Share Plan to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing; and

BE IT FURTHER RESOLVED that if upon any biennial review the difference between the number of affordable units constructed or provided in Middletown and the number of units required pursuant to N.J.A.C. 5:97-2.5 results in a pro-rated production shortage of 10 percent or greater, the Township is not adhering to its implementation schedules pursuant to N.J.A.C. 5:97-3.2(a)4, or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, COAH may direct Middletown Township to amend its plan to address the shortfall; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:97-2.5(e), if the actual growth share obligation determined is less than the projected growth share obligation, Middletown shall continue to provide a realistic opportunity for affordable housing to address the projected growth share; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.3(b), Middletown's substantive certification shall remain in effect until December 31, 2018; and

BE IT FURTHER RESOLVED that any changes to the facts upon which this substantive certification is based or any deviations from the terms and conditions of this substantive certification which affect the ability of Middletown Township to provide for the realistic opportunity of its fair share of low and moderate income housing and which the Township fails to remedy, may render this certification null and void.

I hereby certify that this resolution was
duly adopted by the Council on Affordable
Housing at its public meeting on October 14, 2009

A handwritten signature in cursive script that reads "Reneé Reiss". The signature is written in black ink and is positioned above the printed name and title.

Reneé Reiss, Secretary
Council on Affordable Housing



***Council on Affordable Housing
Compliance Report
September 24, 2009***



Municipality: Middletown Township
County: Monmouth County

COAH Region: 4
Planning Area: 1, 2, 5
Special Resource Area: None

Housing Element and Fair Share Plan Adopted: 12/11/2008
Petition for 3rd Round Substantive Certification: 12/31/2008
Completeness Determination: 4/13/2009
Date of Publication: 4/17/2009

Objections Received: Yes
1. Bamm Hollow LLC
2. Mountain Hill LLC
3. Comment Received by: Fair Share Housing Center
Mediation Commenced: August 25, 2009
Mediation Concluded: August 25, 2009

Petition Includes:
VLA: No
GPA: No
Waiver: Yes **Section:** N.J.A.C. 5:80-26.3(b)

Date of Site Visit: July 23, 2009

History of Approvals:

	COAH	JOC	N/A
First Round:	3/14/1994		
Second Round:	X		
Extended Certification:	X		

Plan Preparer: Jason A. Greenspan, P.P., AICP - Director of Planning

Municipal Housing Liaison: Jason A. Greenspan, P.P., AICP - Director of Planning

Recommendation: Grant Substantive Certification

SUMMARY OF FAIR SHARE OBLIGATION

Rehabilitation Share	154
Prior Round Obligation	1,561
Projected Growth Share Obligation (Net)	233

ACTUAL GROWTH and GROWTH SHARE through September 2008¹

Res Units (#)	Actual Res Growth Share	Jobs (#)	Actual Non-Res Growth Share	Actual TOTAL Growth Share
660	132	405	25.3	157 units

¹ This growth share number does not take into account allowable exclusions permitted under N.J.A.C. 5:97-2.4; therefore, the actual growth share may vary.

COMPLIANCE PLAN SUMMARY

Obligation	Credit/ Mechanism Type	# Units Completed	# Units Proposed	TOTAL
Rehabilitation: 154 units				
Credits	Post-April 1, 2000	28		28
Program(s)	Municipal		126	126
Rehabilitation Subtotal				154
NEW CONSTRUCTION:				
Prior Round: 1,561 units				
Credits	Prior Cycle	133		133
	Post-1986	465		465
	RCA	500		500
Proposed Mechanism(s)	Inclusionary Zoning		155	155
	Supportive/Special Needs Housing		12	12
	Accessory Apartment Program		2	2
Prior Round Bonus(es)	Rental	127	167	294
Prior Round Subtotal				1,561
Growth Share: 233 units				
Credits	Post-1986	2		2
Proposed Mechanism(s)	Inclusionary Zoning		133	133
	Supportive/Special Needs Housing		10	10
	Accessory Apartment Program		21	21
	Market to Affordable Program		10	10
	Residential over Commercial Program		22	22
	Municipally Sponsored 100 percent affordable projects		137	137
Growth Share Bonus(es)	Rental	-	3	3
Growth Share Subtotal				338
Surplus				+105

I. HOUSING ELEMENT

Pursuant to N.J.S.A. 40:55D-28(b), the Housing Element is a required section of the Municipal Master Plan. The Housing Element must be designed to achieve the goal of access to affordable housing to meet existing and future housing needs, with special attention given to low- and moderate-income households. The housing needs analysis must include demographic information on existing and projected housing stock and employment characteristics, a quantification of low- and moderate-income housing need, and a consideration of the lands within the municipality that are most appropriate to accommodate such housing. Middletown's Housing Element includes sufficient information regarding housing stock, demographic and employment characteristics and population trends pursuant to N.J.S.A. 52:27D-310.

Under N.J.A.C. 5:97-2.1(b), the Housing Element must also set forth the municipality's fair share obligation, which is the sum of the rehabilitation share, the prior round obligation, and the growth share.

A. Rehabilitation Share

The rehabilitation share is the number of existing housing units within a municipality as of April 1, 2000, that are both deficient and occupied by households of low or moderate income. As indicated in Appendix B of N.J.A.C. 5:97, Middletown Township has a 154-unit rehabilitation share.

B. Prior Round Obligation

The prior round obligation is the cumulative 1987-1999 new construction obligation provided in Appendix C of N.J.A.C. 5:97. Middletown has a prior round obligation of 1,561 units.

C. Projected Growth Share

The projected growth share is initially calculated based on household (residential) and employment (non-residential) 2004-2018 projections. Pursuant to Appendix F of N.J.A.C. 5:97, Middletown has a residential projection of 1,149 units and a non-residential projection of 3,731

jobs, which results in an initial projected growth share obligation of 463 affordable units. However, after subtracting the allowable exclusions itemized in Worksheet A (Attachment 1), the Township's residential projection is reduced to 0. Therefore, the Township's total projected growth share for the period 1999-2018 is 233 affordable units consisting of a zero unit projected residential growth share and a projected non-residential growth share of 233.2.²

SUMMARY OF FAIR SHARE OBLIGATION

Rehabilitation Share	154
Prior Round Obligation	1,561
Projected Growth Share Obligation (Net)	233

II. FAIR SHARE PLAN

A Fair Share Plan, as required under N.J.A.C. 5:97-3.1, describes the completed or proposed mechanisms and funding sources, if applicable, that will be utilized to specifically address a municipality's rehabilitation share, prior round obligation, and growth share obligation and includes the draft ordinances necessary to implement that plan. Affordable housing must be provided in direct proportion to the growth share obligation generated by the actual growth.

Middletown Township's Fair Share Plan, and the supporting documentation incorporated by reference therein, address the requirements of N.J.A.C. 5:97-3.1 as follows:

A. Plan to Address Rehabilitation Share

Rehabilitation Share Credits

Middletown is requesting credit for 28 units rehabilitated subsequent to April 1, 2000. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11. **[28 rehabilitated units]**

² The Township's nonresidential projection of 3,731 jobs is divided by 16 to yield 233.2 units. The Township's total projected growth share is therefore 233 units.

Rehabilitation Credits

Rehabilitation Program	# Credits
Middletown Rehab Program	28
TOTAL	28

Proposed Rehabilitation Program(s)

Middletown Rehabilitation Program

Middletown currently implements a municipally sponsored rehabilitation program for the rehabilitation of deficient units within the Township. Middletown's rehabilitation program will adhere to the regulations in N.J.A.C. 5:97-6.2, including having the program available to both owner-occupied and renter-occupied units. Middletown has provided an operating manual and an affirmative marketing plan for the administration of the program. The rehabilitation program is funded through Community Development Block Grants (CDBG) that the Township receives directly from HUD and Neighborhood Preservation Program (NPP) funds from DCA. The Township has provided an implementation schedule for the rehabilitation program that provides sufficient dollars to fund no less than half of the municipal rehabilitation component by the mid-point of the substantive certification period, and has submitted a resolution of intent to bond that was adopted on December 11, 2008, in the event of a shortfall in funding. **[126-unit rehabilitation program]**

Proposed Rehabilitation Program(s)

Rehabilitation Program	# Units
Middletown Rehab Program	126
TOTAL	126

B. Plan to Address Prior Round Obligation

Prior Round Credits

Middletown is addressing its prior round obligation with 1,225 prior cycle credits and post-1986 credits, totaling 1098 credits and 127 bonuses. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.

Prior Cycle Credits

Project/Development Name	Year Built or Approved	Type of Affordable Unit	# Units/Bedrooms	Total Units/Bedrooms
Credits without Controls	various	Family For-sale	101	101
Scattered Site Municipal Construction Program	various	Family For-sale	2	2
King's Row Senior Citizen Development	1983	Age-restricted Rentals	26	26
Departmental Disabilities Association Group Home	1985	Supportive/Special Needs Housing	4	4
TOTALS			133	133

Post-1986 Credits

Project/Development Name	Year Built or Approved	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Highlands Township RCA	1988	RCA	50	-	-	50
Long Branch City RCA	1988	RCA	150	-	-	150
Union Beach Township RCA	1988	RCA	75	-	-	75
Red Bank Township RCA	1988	RCA	45	-	-	45
Asbury Park City RCA	1989	RCA	180	-	-	180
Outlook America Group Home	1998	Supportive/Special Needs Housing	4	Rental	4	8
Brookside Group Home	2001	Supportive/Special Needs Housing	4	Rental	4	8
Collins Group Home	2003	Supportive/Special Needs Housing	4	Rental	4	8
Accessory Apartments	various	Family Rental	29	-	-	29
Beacon Place inclusionary	2000	Family Rental	28	Rental	28	56
Chapel Hill inclusionary	2007	Family Rental	30	Rental	30	60
Park Ferry inclusionary ³	2006	Family Rental	6	Rental	6	12
Regency Park inclusionary	2004	Family Rental	16	Rental	16	32
Harmony Glen inclusionary ⁴	2008	Family Rental	18	Rental	18	36
Residential Over Commercial – Elgohail ⁵	2007	Family Rental	12	Rental	12	24

³ On September 23, 2009, COAH granted the Township a bedroom distribution waiver for this project.

⁴ Harmony Glen is under construction.

⁵ Elgohail is under construction.

Wallace 100% Affordable Municipally Sponsored Project ^{6 7}	2007	Family Rental	5	Rental	5	10
Luftman Pavilion 100% Affordable	1998	Age-restricted Rental	60	-	-	60
Conifer Village 100% Affordable	2008	Age-restricted Rental	180	-	-	180
Scattered Site Municipal Construction Program	various	Family For-sale	23	-	-	23
Laurel Greene inclusionary	2002	Family For-sale	24	-	-	24
Cottage Gate inclusionary ⁸	2008	Family For-sale	13	-	-	13
Browns Landing inclusionary ⁹	2009	Family For-sale	2	-	-	2
Wallace Point 100% Affordable Municipally Sponsored Project	2007	Family For-sale	7	-	-	7
TOTALS			965		127	1,092

Wallace Point Waiver - 100 % Affordable Municipally Sponsored Project

The Wallace Point site is located at Highway 36 (Block 532, Lots 42 & 43) and is 3.1 acres. The project received final approvals on October 17, 2007, for twelve affordable units, but is not constructed yet. Seven of the units will be family for-sale units and five will be family rental units. The site is owned by the Affordable Housing Alliance of NJ and will be developed and managed by the Alliance. The Alliance is actively seeking Balanced Housing Funds and will enter into a PILOT agreement with the Township.

⁶ Wallace is approved but not yet constructed.

⁷ Middleton is requesting a bedroom distribution waiver for this project.

⁸ Cottage Gate is under construction.

⁹ Browns Landing is under construction.

The site is located in Planning Area 1 and there are significant wetlands and wetlands transition areas on the property. The property received a Letter of Interpretation (LOI) from DEP's Land Use Regulation Division to establish the wetlands boundary. Approximately 0.5 to 0.75 acres of the property is developable. The remaining constrained portions are encumbered by a conservation easement. Residential and commercial uses surround the property. The development will be served by public water and sewer.

Instead of providing a bedroom distribution in accordance with N.J.A.C. 5:80-26.3(b), the project will consist of six one-bedroom units and six two-bedroom units. Pursuant to N.J.A.C. 5:96-15, the Township is requesting a waiver from the bedroom distribution requirements. The Township has provided a chart that demonstrates that its existing 17 scattered site homes have three bedrooms, two homes have four bedrooms and one home has five bedrooms.

The waiver meets the requirements of N.J.A.C. 5:96-15.2(a) in that the strict application of the rule would create an unnecessary environmental hardship. The Township states that the bedroom mix was necessary due to extensive environmentally-constrained areas on the property, including wetlands and wetlands transition areas. Due to the constraints, a buffer averaging plan was necessary from DEP to allow access to the very limited upland portions of the site. Satisfying the bedroom mix requirement would entail the construction of three bedrooms at the site, which in turn would increase the parking requirements per the Residential Site Improvement Standards. As a result, the Township states that the total number of affordable units would have to be reduced on the site, due to the site's very limited building area. Moreover, the Township maintains that expanding the footprint of the building or expanding the parking area would have required further permits from DEP and disturbance of additional wetlands and wetlands transition areas. In addition, the waiver fosters the production of affordable housing because the units are already approved, and to require a new design of the buildings to meet the three-bedroom requirement would create a financial hardship for the Township and the developer. Granting the waiver fosters the intent, if not the letter of the rules, in that the Township has already made up any deficiency of three-bedroom units that would be required under the regulation. The Township states that it has already facilitated the construction of almost 20 scattered site single family residences, which primarily contain three bedrooms. In addition, the

Township's Fair Share Plan provides a mix of housing options, including a mix of one, two and three-bedroom for sale and rental units. COAH staff recommends approval of this waiver.

The affordable units must meet the remaining requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, pricing, and low/moderate split. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.7(e).

Proposed Affordable Housing Mechanisms

Middletown proposes to address the remaining 336-unit prior round obligation through the following mechanisms:

Mountain Hill Inclusionary Development

The Mountain Hill site is included in the Township's plan for 400 total units, which includes 80 affordable family rental units. The site is proposed to be developed at a gross density of three units per acre with a 20 percent set-aside, and a maximum of 850,000 square feet of nonresidential space, which is below the minimum presumptive density for rental units pursuant to N.J.A.C. 5:97-6.4(b)6i. However, the Township has demonstrated the realistic opportunity of the reduced density by submitting an agreement with the developer, which was executed on September 24, 2009. In addition, Middletown is requesting 80 rental bonuses for the development. The agreement provides the commitment for 80 affordable family rental units. Middletown rezoned the site "Planned Development (PD)" on July 20, 2009.

Pursuant to N.J.A.C. 5:97-3.13, the Township indicates that the portion of the site that will be developed is suitable. The Mountain Hill site is located in the central part of the Township on the Route 35 corridor between Kaness Lane and Kings Highway East, (Block 825, Lots 53-69.01, 72-81 & Block 871, Lot 7.02). The site is owned by Mountain Hill, LLC. The site is approximately 138 acres. The site was previously zoned Active Adult Community (AAC) with Planned Development (PD) zoning. The site is surrounded by business, light industrial and residential uses.

The Mountain Hill site is located in Planning Area 1. The Township indicates that there are wetlands, buffers and floodplain areas on the site, but that up to 60 percent of the site

(approximately 80 acres) is developable. Currently, the site contains some retail buildings and a bank, which is currently serviced by public sewer and water. The retail buildings will likely be removed. The Township indicates that connections to the existing infrastructure will be necessary. The Township has submitted information demonstrating that sufficient water and sewer capacity are available for the proposed development.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, rental pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.4(k). **[80 family rental units & 80 rental bonuses]**

Avaya (Four Ponds) Inclusionary Development

The Avaya site is included in the Township's plan for 375 total units, which includes 75 affordable family rental units. The site is proposed to be developed at a gross density of 5.5 units per acre with a 20 percent set-aside, which is below the minimum presumptive density for rental units pursuant to N.J.A.C. 5:97-6.4(b)6i. However, the Township has demonstrated the realistic opportunity of the reduced density by submitting an agreement with the developer, which was executed on July 20, 2009. In addition, Middletown is requesting 75 rental bonuses for the development. The agreement provides the commitment for 75 affordable family rental units. Middletown rezoned the site "Residential Multifamily (RMF-2)" on July 20, 2009.

Pursuant to N.J.A.C. 5:97-3.13, the Township indicates that the portion of the site that will be developed is suitable. The Avaya site is located in the southern part of the Township at 307 Middletown Lincroft Road (Block 1063, Lot 10). Access will be provided from Middletown Lincroft Road and West Front Street. The site is owned by Four Ponds. The site is approximately 68 acres. The site was previously zoned Office Research (OR-1). The site is surrounded by educational, agricultural and residential uses. The site currently contains a 300,000 square foot office building and expansive parking areas. The owners of the property have advised the Township that the current tenant, Avaya, will not be renewing their lease after it expired in 2009. The office building will be demolished.

The Avaya site is located in Planning Area 1. The Township indicates that there are limited wetlands and floodplain areas on the site, but that up to 60 percent of the site (approximately 40 acres) is developable. The Township indicates that the office building is currently serviced by public water and sewer. The Township has submitted information demonstrating that sufficient water and sewer capacity are available for the proposed development.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, rental pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.4(k). **[75 family rental units & 75 rental bonuses]**

Supportive and Special Needs Housing - Housing and United Services with Monarch Housing Inc.

Pursuant to N.J.A.C. 5:97-6.10, Middletown is proposing to create a total of eight group home bedrooms on two municipally owned properties (two four-bedroom facilities) with Housing and United Services (HUS) in conjunction with Monarch Housing Inc. Pursuant to N.J.A.C. 5:97-6.10(e)4, Middletown has submitted documentation demonstrating site control of the properties.

A draft agreement between HUS and Middletown has been submitted. Middletown is requesting eight rental bonuses for the group home bedrooms. The Township has also provided a letter of intent from HUS. In addition, Middletown has submitted a draft ordinance, which provides the Township's intent to enter into a contract for the conveyance of the properties to HUS. The executed agreement with HUS and the adopted ordinance must be submitted to COAH within 45 days of substantive certification.

Pursuant to N.J.A.C. 5:97-6.10(e)6, Middletown has submitted a pro forma statement for the project. Middletown anticipates that the primary funding source for construction and ongoing rental assistance will be HUD Section 811 "Supportive Housing for Persons with Disabilities" funds, with the NJ Division of Developmental Disabilities providing some funds for construction

costs and ongoing supportive services. HUS anticipates applying for the HUD Section 811 funds by November 16, 2009. The Township has submitted a resolution of intent to bond that was adopted on December 11, 2008, in the event of a shortfall in funding. In addition, the Township has submitted a detailed construction schedule. The construction schedule indicates that building permits are anticipated to be issued in October 2010.

The sites are located in Planning Area 1. There are no environmental constraints on the properties, except for some moderately steep slopes that will not present a barrier to access or construction. Residential neighborhoods surround the properties. The developments will be served by public water and sewer. The Chestnut Avenue site has approximately 100 feet of frontage along Chestnut Avenue. Access to the Middletown Avenue site will be provided via a recently extended segment of Middletown Avenue.

Middletown is requesting eight rental bonuses for the group home bedrooms pursuant to N.J.A.C. 5:97-3.5. The Township should note that in the event the units are not constructed in accordance with the construction schedule, Middletown may lose the rental bonuses pursuant to N.J.A.C. 5:97-3.5(c). Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.10(f). **[8 Special Needs bedrooms, plus 8 rental bonuses]**

Supportive and Special Needs Housing - Community Options

Pursuant to N.J.A.C. 5:97-6.10, Middletown is proposing a group home facility with a total of five bedrooms. This group home is provided as part of the Cottage Gate development. The 105-unit development, which is currently under construction, is obligated through its development approvals to provide a 17.5 percent affordable housing set-aside. The set-aside requires a minimum of 18 affordable units, of which 13 will be family for sale units and five were supposed to be part of the group home. However, a letter from Community Options dated September 16, 2009, indicates that only four bedrooms will be occupied by persons with developmental disabilities. Kara Homes was the original developer, which filed for bankruptcy in 2006, and Maplewood Homes is the current developer that has accepted the legal and financial responsibilities of the development approvals.

Middletown has submitted the contract of sale between Kara Homes and Community Options, which will be the group home developer and provider. In addition, the Township has provided a construction permit for the group home, dated January 16, 2009. As of the site visit on July 23, 2009, the building was under construction and almost complete. The Township anticipates that a certificate of occupancy will be issued within the next few weeks. Community Options has provided confirmation that operational funding for the group home has already been secured, and that eligible tenants have already been selected from DDD's pool.

The site is located in Planning Area 1. There are no environmental constraints on the property. Residential neighborhoods surround the properties. The development will be served by public water and sewer.

Middletown is requesting four rental bonuses for the group home bedrooms pursuant to N.J.A.C. 5:97-3.5. **[4 Special Needs bedrooms, plus 4 rental bonuses]**

Accessory Apartment Program

Pursuant to N.J.A.C. 5:97-6.8, Middletown may propose accessory apartments to address its affordable housing obligation provided the municipality's housing stock lends itself to accessory apartments. A municipality may receive credit up-front for up to 10 accessory apartment units, or an amount equal to a combined total of 10 percent of the fair share obligation, whichever is greater.

Middletown's Fair Share Plan proposes a 23-unit Accessory Apartment Program in all its residential zones. The Township is applying two units to its prior round obligation and 21 units to its projected growth share obligation. The Township already has an adopted accessory apartment ordinance. As indicated above, the Township has already created 29 accessory apartments. The accessory apartments will be served by public water and sewer where available, or on-site wells and septic systems. The Township will provide the minimum subsidy of \$20,000 for each moderate-income unit and \$25,000 for each low-income unit. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates. Middletown will fund the program with its affordable housing trust fund. The Township has

submitted a spending plan and a resolution of intent to bond that was adopted by the Township on December 11, 2008, in the event of a shortfall in funding,.

The units will be administered by the Township's in-house affordable housing administrator. Pursuant to N.J.A.C. 5:97-6.8(e), Middletown has submitted a written operating manual for administering the program and an affirmative marketing plan. The units must be affirmatively marketed, and have the proper affordability controls, low/moderate split and rental pricing. The units will have 10-year affordability controls, pursuant to N.J.A.C. 5:97-6.8(c)1. **[2 units in Accessory Apartment Program]**

Proposed Prior Round Affordable Housing Mechanisms

Type/Name of Affordable Housing Mechanism	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Mountain Hill Inclusionary	Family Rental	80	Rental	80	160
Avaya Inclusionary	Family Rental	75	Rental	75	150
Monarch/HUS group homes	Supportive/Special Needs	8	Rental	8	16
Community Options group home	Supportive/Special Needs	4	Rental	4	8
Accessory Apartment Program	Family Rental	2	-	-	2
TOTALS		169		167	336

Prior Round Obligation Parameters

Middletown Township has satisfied the applicable Prior Round parameters as follows:

Prior Round Rental Obligation:¹⁰ 357 Units

Development/Project Name	Type of Affordable Unit	# Units
Outlook America Group Home	Supportive/Special Needs	4
Brookside Group Home	Supportive/Special Needs	4
Collins Group Home	Supportive/Special Needs	4
Accessory Apartments	Family Rentals	29
Beacon Place inclusionary	Family Rentals	28
Chapel Hill inclusionary	Family Rentals	30
Park Ferry inclusionary	Family Rentals	6
Regency Park inclusionary	Family Rentals	16
Harmony Glen inclusionary	Family Rentals	18
Residential Over Commercial – Elgohail	Family Rentals	12
Wallace 100% Affordable Municipally Sponsored Project	Family Rentals	5
Luftman Pavilion	Age-restricted Rentals	60
Conifer Village	Age-restricted Rentals	180
Mountain Hill Inclusionary	Family Rental	80
Avaya Inclusionary	Family Rental	75
Monarch/HUS group homes	Supportive/Special Needs	8
Community Options group home	Supportive/Special Needs	4
Accessory Apartment Program	Family Rental	2
TOTAL		565

¹⁰ Rental Obligation= .25 (Prior Round Obligation-Prior Cycle Credits) or .25(1,561-133) = 357 units N.J.A.C. 5.97-3.10(b)1

Prior Round Age-Restricted Maximum:¹¹ 263 Units

Development/Project Name	Type of Affordable Unit	# Units
Luftman Pavilion	Age-restricted Rentals	60
Conifer Village	Age-restricted Rentals	180
TOTAL		240

Regional Contribution Agreement (RCA) Maximum:¹² 777 Units

Receiving Municipality(s)	Type of Affordable Unit	# Units
Highlands Township RCA	RCA	50
Long Branch City RCA	RCA	150
Union Beach Township RCA	RCA	75
Red Bank Township RCA	RCA	45
Asbury Park City RCA	RCA	180
TOTAL		500

¹¹ Age-Restricted Maximum= .25 (Prior Round Obligation + Rehabilitation Share - Prior Cycle Credits – Rehabilitation Credits -Transferred RCA Units Addressing the Prior Round Obligation) or .25(1,561+154-28-133-500) = 263.5 or 263 units. N.J.A.C. 5:97-3.10(c)1.

¹² RCA Maximum: .50(Prior Round Obligation + Rehabilitation Share – Prior Cycle Credits – Rehabilitation Credits) or .50(1,561+154-133-28) = 777 units N.J.A.C. 5:97-3.10(d)1

Prior Round Rental Bonus Maximum:¹³ 357 Units

Development/Project Name	Type of Bonus	# Bonuses
Outlook America Group Home	Rental	4
Brookside Group Home	Rental	4
Collins Group Home	Rental	4
Beacon Place inclusionary	Rental	28
Chapel Hill inclusionary	Rental	30
Park Ferry inclusionary	Rental	6
Regency Park inclusionary	Rental	16
Harmony Glen inclusionary	Rental	18
Residential Over Commercial – Elgohail	Rental	12
Wallace 100% Affordable Municipally Sponsored Project	Rental	5
Mountain Hill Inclusionary	Rental	80
Avaya Inclusionary	Rental	75
Monarch/HUS group homes	Rental	8
Community Options group home	Rental	4
TOTAL		294

¹³ No rental bonuses shall be granted for rental units in excess of the prior round rental obligation, therefore, PR Rental Bonus Maximum = PR Rental Obligation or 357 N.J.A.C. 5:97-3.5

C. Plan to Address Projected Growth Share

Growth Share Credits

Middletown is addressing two units of the projected 233-unit growth share obligation with two units of credit for approved units. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.

Post-1986 Credits

Project/Development Name	Year Built or Approved	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Stavola Inclusionary Development ¹⁴	2008	Family For-sale	2	-	-	2
TOTALS			2		-	2

Approved But Not Constructed

Stavola Inclusionary Development

Pursuant to N.J.A.C. 5:97-4.3(a)3, Middletown is eligible to receive credit for two affordable family for-sale units in an inclusionary development, known as Stavola. The development is located at the intersection of Chapel Hill Road and Kings Highway East (Block 832, Lot 93) and is 64 acres. The site was granted preliminary subdivision approval on July 2, 2008, but is not constructed yet. The project will contain 17 market rate units and two affordable units.

The site is located in Planning Area 1. The site contains steep slopes and wetlands. However, the Township indicates that the portion of the site that will be developed is suitable. The site will be served by public water and sewer.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units,

¹⁴ Stavola is approved but not yet constructed.

Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.4(k). **[2 post-1986 for sale credits]**

Proposed Affordable Housing Mechanisms

The Township proposes to address its remaining 231-unit projected growth share obligation through the following mechanisms:

Schwartz/Taylor Lane Inclusionary Development

The Taylor Lane site is included in the Township's plan for 360 total units, which includes 72 affordable family rental units (the site was originally to produce 96 affordable rental units; however, the Township was unable to reach an agreement with the developer). The Township has removed its request for rental bonuses for the project. The site is proposed to be developed at a gross density of 12 units per acre with a 20 percent set-aside, which is consistent with the presumptive density for rental units pursuant to N.J.A.C. 5:97-6.4(b)6i. Middletown has submitted a more detailed draft zoning ordinance for the site. The ordinance must be adopted within 45 days of substantive certification.

Pursuant to N.J.A.C. 5:97-3.13, the Township indicates that the portion of the site that will be developed is suitable. The Taylor Lane site is located in the northwestern part of the Township at 1200 Highway 35 (Block 600, Lots 34, 35.01 & 35.02). The site is owned by Jos Becker and Harry Swartz. The site is approximately 30 acres. The site is presently zoned Active Adult Community (AAC). The site is surrounded by business and residential uses.

The Taylor Lane site is located in Planning Area 1. The Township indicates that there are wetlands, and floodplains on the site, but that up to 70 percent of the site is developable. The site has a Wetlands Letter of Interpretation/Line Verifications from the NJ Department of Environmental Protection (DEP). The Township indicates that the site will be served by public water and sewer. The Township has submitted information demonstrating that sufficient water and sewer capacity are available to the site.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, pricing, low/moderate split and bedroom distribution. The Township has confirmed that the

affordable units will have the proper bedroom distribution. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.4(k). **[72 family rental units]**

Steiner & Frustacci Inclusionary Development

The Steiner & Frustacci site is included in the Township's plan for 139 total units, which includes 35 affordable family for sale units. The site is proposed to be developed at a gross density of eight units per acre with a 25 percent set-aside, which is above the minimum presumptive density in N.J.A.C. 5:97-6.4(b)1. In addition, the Township is proposing to deed restrict four of the units as very-low income units. Middletown has submitted a more detailed draft zoning ordinance for the site. The ordinance must be adopted within 45 days of substantive certification.

Pursuant to N.J.A.C. 5:97-3.13, the Township indicates that the portion of the site that will be developed is suitable. The Steiner & Frustacci site is located in the northwestern part of the Township at 446 Laurel Avenue (Block 795, Lots 23 & 24). The site is owned by Aldo Frustacci. The site is approximately 17 acres. The site is presently zoned Office Research (OR-2). The site is surrounded by office and residential uses. The site currently contains barn buildings. If the Township determines that the existing buildings have historic significance, they may negotiate with the developer to preserve the buildings.

The Steiner & Frustacci site is located in Planning Area 2. The Township indicates that there are wetlands, steep slopes and floodplains on the site, but that up to 75 percent of the site is developable. The Township indicates that the site will be served by public water and sewer. The Township has submitted information demonstrating that sufficient water and sewer capacity are available to the site.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.4(k). **[35 family for sale units]**

Meadowview Inclusionary Development

The Meadowview site is included in the Township's plan for 35 total units, which includes nine affordable family for sale units. The site is proposed to be developed at a gross density of 24 units per acre with a 25 percent set-aside, which is above the minimum density requirement in N.J.A.C. 5:97-6.4(b)1. In addition, the Township is proposing to deed restrict one of the units as very-low income units. Middletown rezoned the site "Residential Multifamily (RMF-1)" on July 20, 2009.

Pursuant to N.J.A.C. 5:97-3.13, the Township indicates that the portion of the site that will be developed is suitable. The Meadowview site is located in the northern part of the Township at 630 Main Street (Block 281, Lots 14 & 15). The site is owned by Louis J. De Fonzo. The site is approximately two acres. The site was previously zoned for single family residential. The site is surrounded by marine commercial and light industrial uses. The site currently contains two dwelling units and a fire damaged building, which will all be removed.

The Meadowview site is located in Planning Area 1. The Township indicates that there are wetlands and floodplains on the site, but that up to 85 percent of the site is developable. The site has a Wetlands Letter of Interpretation/Line Verifications from the NJ Department of Environmental Protection (DEP). The entire site is in a 100-year flood zone. However, Middletown states that the buildings will be elevated to ensure the first floor is at or above the base flood elevation. The Township indicates that the site will be served by public water and sewer. The Township has submitted information demonstrating that sufficient water and sewer capacity are available to the site.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.4(k). **[9 family for sale units]**

199 Laurel Associates (Steiner) Inclusionary Development

The Steiner site is included in the Township's plan for 37 total units, which includes nine affordable family for sale units. The site is proposed to be developed at a gross density of eight units per acre with a 25 percent set-aside, which is above the minimum presumptive density in N.J.A.C. 5:97-6.4(b)1. In addition, the Township is proposing to deed restrict one of the units as very-low income units. Middletown has submitted a more detailed draft zoning ordinance for the site. The ordinance must be adopted within 45 days of substantive certification.

Pursuant to N.J.A.C. 5:97-3.13, the Township indicates that the portion of the site that will be developed is suitable. The Steiner site is located in the western part of the Township at Holland Road and Laurel Avenue (Block 795, Lot 19). The site is owned by 446 Laurel Associates and Steiner Equ. Group. The site is approximately five acres. The site is presently zoned for single family residential development. The site is surrounded by residential and office research uses. The site currently contains existing barns that will be removed.

The Steiner site is located in Planning Area 2. The Township indicates that there are some limited areas of steep slopes and wetlands transition areas on the site, but most of the site is unconstrained. The Township indicates that the site will be served by public water and sewer. The Township has submitted information demonstrating that sufficient water and sewer capacity are available to the site.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.4(k). **[9 family for sale units]**

Atlantic Pier Inclusionary Development

The Atlantic Pier site is included in the Township's plan for 45 total units, which includes eight affordable family for sale units. The site is proposed to be developed at a gross density of eight units per acre with a 25 percent set-aside, which is consistent with the minimum presumptive density in N.J.A.C. 5:97-6.4(b)1. In addition, the Township is proposing to deed restrict one of the units as very-low income units. Middletown has submitted a more detailed

draft zoning ordinance for the site. The ordinance must be adopted within 45 days of substantive certification.

Pursuant to N.J.A.C. 5:97-3.13, the Township indicates that the portion of the site that will be developed is suitable. The Atlantic Pier site is located in the northeastern part of the Township at Highway 36 (Block 732, Lots 10-13 & 21). The site is owned by Atlantic Pier Co., Inc. The site is approximately six acres. The site is presently zoned Residential Town Home Development (RTH-9). The site is surrounded by residential and business uses.

The Atlantic Pier site is located in Planning Area 1. The Township indicates that there are no substantial environmental constraints except for some steep slopes. The Township indicates that the site will be served by public water and sewer. The Township has submitted information demonstrating that sufficient water and sewer capacity are available to the site.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.4(k). **[8 family for sale units]**

Accessory Apartment Program

As described above under Section II, Part B, of this report, two units of the 23-unit Accessory Apartment Program will be used to address a portion of Middletown's prior round obligation. The remaining 21 affordable family rental units in the program will be used to address a portion of its growth share obligation. **[21-unit Accessory Apartment Program]**

Market to Affordable Program

Middletown's Fair Share Plan proposes a 10-unit Market to Affordable Program pursuant to N.J.A.C. 5:97-6.9. The Township will target existing homes that are for sale and sell the units to income-eligible households. Middletown has demonstrated that there are sufficient market-rate units within the Township, as documented by a multiple listing service. The multiple service list shows 15 units priced under \$200,000. The Township states that it will provide the minimum subsidy of \$25,000 for each moderate-income unit and \$30,000 for each low-income

unit. However, based on the asking price of the market rate units, the Township is allocating \$900,000 in its spending plan in order to provide additional subsidies above the minimum for the prices to achieve an affordable level. Middletown will fund the program with its affordable housing trust fund. The Township has submitted a spending plan and a resolution of intent to bond that was adopted on December 11, 2008, in the event of a shortfall in funding.

The units will be administered by the Township's in-house affordable housing administrator. The units must be certified to be in sound condition as a result of an inspection performed by a licensed building inspector, be affirmatively marketed, and have the proper affordability controls, low/moderate split and pricing. Pursuant to N.J.A.C. 5:97-6.9(e), the Township has submitted an operating manual that includes a description of the program procedures and administration in accordance with UHAC and an affirmative marketing plan.

[10-Unit Market to Affordable Program]

Supportive and Special Needs Housing-Coe

Pursuant to N.J.A.C. 5:97-6.10, Middletown is proposing to create 10 special needs bedrooms in an existing home. The property is currently owned by George Coe and is located on Sleepy Hollow Road (Block 873, Lot 163). The site is 25.6 acres and formally was a farm. There is an existing home on the property. The Township, in conjunction with the Monmouth Conservation Foundation, NY/NJ Baykeeper, and Impact/OASIS (Improving Middletown's Program for Autistic Children and "OASIS" stands for Ongoing Autistic Success in Society) has a contract to purchase the property and subdivide it into two lots. One lot will be designated as municipal open space and the other lot (approximately seven acres) will be purchased by Impact/OASIS, which will convert the existing home into a supportive housing/special needs facility for adults with autism. The property will also serve as a farm center where the residents will be able to work on the small farm to produce their own food. On June 15, 2009, the Township adopted an ordinance authorizing the Township to purchase the Coe site. The ordinance also authorizes the Township to enter into an agreement with Impact/OASIS.

The site is located in Planning Area 1 and contains wetlands. However, the Township indicates that the portion of the site that will be developed is suitable. The site will be served by the existing infrastructure that serves the existing house.

Pursuant to N.J.A.C. 5:97-3.2(a)4, the Township has provided an implementation schedule that sets forth a detailed timetable that demonstrates a realistic opportunity as defined under N.J.A.C. 5:97-1.4 and a timetable for the submittal of all information and documentation required by N.J.A.C. 5:97-6.10. The Township's mechanism checklist form includes a timetable for each step of the development process in accordance with N.J.A.C. 5:97-6.10(e), with certificates of occupancy being issued in 2014, requiring that supporting documentation be submitted to COAH in 2011, two years before construction begins.

Middletown is requesting three rental bonuses for the group home bedrooms ($10 * .25 = 2.5$ rounded up to 3). Middletown has provided the contract of sale and a letter of intent, which provide the commitment for the development of the facility from Impact/OASIS. The Township should note that in the event the units are not constructed in accordance with its implementation schedule, Middletown may lose the rental bonuses pursuant to N.J.A.C. 5:97-3.6(a)3ii. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.10(f). **[10 Supportive/Special Needs bedrooms, plus 3 rental bonuses]**

Innovative Approaches: Residential Over Commercial Development Program

Middletown's 2003 second round and third round Housing Element and Fair Share Plan first included an innovative program referred to as the "Residential over Commercial" program. The program provides financial incentives to establish affordable housing units above commercial units at appropriate locations. The Township has identified certain properties comprised of existing single-story commercial and rezoned them to allow the development of second story residential uses. The Township states that it provides a per unit subsidy for this program of \$23,000 for each low-income unit produced and \$17,000 for each moderate-income unit produced. Middletown will fund the program with its affordable housing trust fund. The Township's spending plan allocates \$820,000 for the following four identified residential over commercial projects (Elgohail, Whirl, Rosen and Mogas). The Township has submitted a

spending plan and a resolution of intent to bond that was adopted by the Township on December 11, 2008, in the event of a shortfall in funding.

One project has already received approvals under the residential over commercial overlay ordinance and is under construction. The Elgohail project will contain 12 affordable family rental housing units. The Township is anticipating that three more residential over commercial projects will be proposed in the near future.

The first site, known as the Whirl site, is located at 190 Main Street (Block 260, Lot 2). The property is 0.6 acres. The Township is anticipating that this site will contain commercial on the first floor and two affordable family rental units on the second floor. The site currently contains a residential structure, which will most likely be demolished and open lawn areas. The site is located in Planning Area 1 and has 180 feet of frontage on Main Street. There are no environmental constraints on the property. Residential and commercial uses surround the properties. The development will be served by public water and sewer.

The second site, known as the Rosen Investment site, is located at 18 Leanardville Road (Block 646, Lot 29). The property is one acre. The site currently contains a vacant, single story 4,000 square foot office building, which will be retrofitted to accommodate new commercial development on the first floor and eight affordable family rental units on the second floor. The site is located in Planning Area 1 and has 80 feet of frontage on Leanardville Road. The Township indicates that the site likely contains wetlands and transition areas associated with a nearby stream and some steep slopes may be present on the southeast back section of the site, where development is not proposed. However, the Township anticipates that 50 percent of the site is developable. Residential, places of worship and office uses surround the properties. The development will be served by public water and sewer.

The third site, known as Mogas, is located at 880-882 Highway 36 (Block 443, Lots 1 & 2). The property is two acres. The Township is anticipating that this site will contain 12 affordable family rental units. The site currently contains an auto repair facility, which will be demolished. The site is located in Planning Area 1 and has 450 feet of frontage along Highway 36 and Concord Avenue. There are no environmental constraints on the property. Residential and commercial uses surround the properties. The development will be served by public water and

sewer. Permits to remove fuel tanks associated with a former gas station were issued in August 2008 and certificate of approval for their removal was issued in October 2008.

The overlay zoning ordinance was submitted by the Township. The ordinance requires a minimum set-aside of 20 percent for affordable housing. The ordinance also allows a 20 percent increase in the floor area ratio to accommodate the residential units. The Whirl and Rosen properties' blocks and lots are not listed in the overlay. The ordinance must be revised to include these properties and adopted within 45 days of COAH's grant of substantive certification and submitted to COAH upon adoption.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, rental pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.7(e). **[22 family rental units in Residential over Commercial Program]**

Municipally Sponsored 100 percent Affordable Developments

Pursuant to N.J.A.C. 5:97-6.7, Middletown is proposing to construct 130 affordable for sale units (consisting of 15 scattered site homes and 115 units in municipally sponsored projects) and seven additional residential over commercial family rental units in future municipally sponsored affordable projects. Middletown has provided separate checklists and implementation schedules for each of the projects; however the Township anticipates that it will be implementing these projects on an ongoing basis.

The Township is anticipating that 115 units will be multiple for-sale projects that will include both 100 percent affordable and mixed-income housing. Middletown anticipates that 57 will be family for-sale units and 58 will be age-restricted sale units. The Township is also proposing to deed restrict 15 of the units for very-low income households.

Pursuant to N.J.A.C. 5:97-3.2(a)4, the Township has provided an implementation schedule that sets forth a detailed timetable that demonstrates a realistic opportunity as defined under N.J.A.C. 5:97-1.4 and a timetable for the submittal of all information and documentation required by N.J.A.C. 5:97-6.7. The Township's mechanism checklist form includes a timetable

for each step of the development process in accordance with N.J.A.C. 5:97-6.7(d), with certificates of occupancy being issued in 2016, requiring that supporting documentation be submitted to COAH in 2014, two years before construction begins.

Middletown anticipates that 15 units will be scattered site construction on municipally owned lots. The Township indicates that it will inventory municipal lots and identify sites and developers throughout the third round period. The Township is also proposing to deed restrict one of the units for very-low income households. Pursuant to N.J.A.C. 5:97-3.2(a)4, the Township has provided an implementation schedule that sets forth a detailed timetable that demonstrates a realistic opportunity as defined under N.J.A.C. 5:97-1.4 and a timetable for the submittal of all information and documentation required by N.J.A.C. 5:97-6.7. The Township's mechanism checklist form includes a timetable for each step of the development process in accordance with N.J.A.C. 5:97-6.7(d), with certificates of occupancy being issued in 2016, requiring that supporting documentation be submitted to COAH in 2013, two years before construction begins.

Middletown anticipates that seven units will be additional residential over commercial affordable rental units. The Township is also proposing to deed restrict one of the units for very-low income households. Middletown states that it is currently working on two potential projects. One potential project is Campbell's Junction, which is an existing 2 ½ story mixed-use building, in which the Township indicates that five affordable units could be provided. The top level is already framed to accommodate residential units and the Township has initiated a dialogue with the landowner. Another potential project could be located on a 0.75-acre tract in the North Middletown neighborhood, a potential redevelopment area. Middletown indicates that it is currently working with the State and the private sector to redevelop this site with a new sustainable, mixed-use building with at least five affordable residential uses above first-floor commercial space.

Pursuant to N.J.A.C. 5:97-3.2(a)4, the Township has provided an implementation schedule that sets forth a detailed timetable that demonstrates a realistic opportunity as defined under N.J.A.C. 5:97-1.4 and a timetable for the submittal of all information and documentation required by N.J.A.C. 5:97-6.7. The Township's mechanism checklist form includes a timetable for each step of the development process in accordance with N.J.A.C. 5:97-6.7(d), with

certificates of occupancy being issued in 2017, requiring that supporting documentation be submitted to COAH in 2014, two years before construction begins.

Middletown will fund the projects with its affordable housing trust fund. The Township has submitted a spending plan and a resolution of intent to bond that was adopted on December 11, 2008, in the event of a shortfall in funding. The Township's spending plan allocates \$1,334,801 for new construction (future 115-unit project), \$330,000 for the seven future residential over commercial units, and \$652,365 for the 15 future scattered site units.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.7(e).

Middletown is requesting seven rental bonuses for the seven proposed family rental units. At this time, rental bonuses cannot be provided until the Township demonstrates a firm commitment. **[130 sale units, 7 family rental units in municipally sponsored 100 percent affordable projects]**

Proposed Affordable Housing Mechanisms

Type/Name of Affordable Housing Mechanism	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Schwartz/Taylor Lane Inclusionary Development	Family Rental	72	-	-	72
Steiner & Frustacci Inclusionary Development	Family For-sale	35	-	-	35
Meadowview Inclusionary Development	Family For-sale	9	-	-	9
199 Laurel Ave (Steiner) Inclusionary Development	Family For-sale	9	-	-	9
Atlantic Pier Inclusionary Development	Family For-sale	8	-	-	8
Accessory Apartment Program	Family Rental	21	-	-	21
Market to Affordable Program	Family For-sale	10	-	-	10
Special Needs Housing-Coe	Supportive/ Special Needs	10	Special Needs Rental	3	13
Residential Over Commercial Program: Mogas (12), Whirl (2), Rosen (8)	Family Rental	22	-	-	22
Future Scattered Sites – Municipally Sponsored 100% Affordable Projects	Family For-sale	15	-	-	15
Future sites - Municipally Sponsored 100% Affordable Project	Family For-sale	57	-	-	57
Future sites - Municipally Sponsored 100% Affordable Project	Age-restricted For-sale	58	-	-	58
Future sites – Residential Over Commercial- Municipally Sponsored 100% Affordable Projects	Family Rental	7	-	-	7
TOTALS		333		3	336

Growth Share Parameters

Middletown Township has satisfied the applicable Growth Share parameters as follows:

Growth Share Rental Obligation:¹⁵ 58 Units

Development/Project Name	Type of Affordable Unit	# Units
Schwartz/Taylor Lane Inclusionary Development	Family Rental	72
Accessory Apartment Program	Family Rental	21
Residential Over Commercial Program	Family Rental	22
Future sites – Residential Over Commercial- Municipally Sponsored 100% Affordable Projects	Family Rental	7
TOTAL		122

Growth Share Family Rental Requirement:¹⁶ 29 Units

Development/Project Name	Type of Affordable Unit	# Units
Schwartz/Taylor Lane Inclusionary Development	Family Rental	72
Accessory Apartment Program	Family Rental	21
Residential Over Commercial Program	Family Rental	22
Future sites – Residential Over Commercial- Municipally Sponsored 100% Affordable Projects	Family Rental	7
TOTAL		122

¹⁵ Projected Growth Share Rental Obligation: $.25(\text{Projected Growth Share})$ or $.25(233) = 58.25$ or 58 units - N.J.A.C. 5:97-3.10(b)3

¹⁶ Projected Growth Share Family Rental Requirement: $.5(\text{Projected Growth Share Rental Requirement})$ or $.5(58) = 29$ units N.J.A.C. 5:97-3.4(b)

Growth Share Minimum Family Requirement:¹⁷ 115 Units

Development/Project Name	Type of Affordable Unit	# Units
Stavola Inclusionary Development	Family For-sale	2
Schwartz/Taylor Lane Inclusionary Development	Family Rental	72
Steiner & Frustacci Inclusionary Development	Family For-sale	35
Meadowview Inclusionary Development	Family For-sale	9
199 Laurel Ave (Steiner) Inclusionary Development	Family For-sale	9
Atlantic Pier Inclusionary Development	Family For-sale	8
Accessory Apartment Program	Family Rental	21
Market to Affordable Program	Family For-sale	10
Residential Over Commercial Program	Family Rental	22
Future sites - Municipally Sponsored 100% Affordable Projects	Family For-sale	57
Future sites – Residential Over Commercial- Municipally Sponsored 100% Affordable Projects	Family Rental	7
TOTAL		252

¹⁷ Projected Growth Share Family Requirement: .5 (Units Addressing the Growth Share Obligation) or .5(230)= 115 units N.J.A.C. 5:97-3.9

Very Low Income Minimum Requirement:¹⁸ 30 Units

Development/Project Name	Type of Affordable Unit	# Units
Schwartz/Taylor Lane Inclusionary Development	Family Rental	12
Steiner & Frustacci Inclusionary Development	Family For-sale	4
Meadowview Inclusionary Development	Family For-sale	1
199 Laurel Ave (Steiner) Inclusionary Development	Family Rental	1
Atlantic Pier Inclusionary Development	Family For-sale	1
Future sites - Municipally Sponsored 100% Affordable Projects	Family & Age-restricted For-sale	15
Future Scattered Sites – Municipally Sponsored 100% Affordable Projects	Family For-sale	1
Future sites – Residential Over Commercial- Municipally Sponsored 100% Affordable Projects	Family Rental	1
TOTAL		36

Age-Restricted Maximum:¹⁹ 58 Units

Development/Project Name	Type of Affordable Unit	# Units
Future sites - Municipally Sponsored 100% Affordable Project	Age-restricted For-sale	58
TOTAL		58

¹⁸ Growth Share Very Low Income Requirement: .13(Units Addressing the Growth Share Obligation) or .13(230)= 29.9 or 30 units N.J.S.A. 52:27D-329.1

¹⁹ Projected Growth Share Age Restricted Maximum: .25(Projected Growth Share) or .25(233)= 58.5 or 58 units N.J.A.C. 5:97-3.10(c)2

Bonus Maximum:²⁰ 58 Bonuses

Development/Project Name	Type of Bonus	# Bonuses
Special Needs Housing-Coe	Rental	3
TOTAL		3

Actual Growth Share Obligation

The actual growth share obligation will be based on permanent certificates of occupancy issued within the municipality for market-rate residential units and newly constructed or expanded non-residential developments in accordance with Appendix D of N.J.A.C. 5:97. At plan evaluation review pursuant to N.J.A.C. 5:96-10, COAH will compare the actual growth share obligation with the actual number of affordable units constructed.

The New Jersey Department of Community Affairs (NJ DCA) *Construction Reporter* indicates that between January 1, 2004 and September 2008, Middletown has issued certificates of occupancy for 660 housing units and also for the nonresidential square footage equivalent of 405 jobs, yielding an actual growth share obligation through September 30, 2008, of 157 affordable units.²¹

D. Summary of Plan to Address Fair Share Obligation

REHABILITATION SHARE SUMMARY

Rehabilitation Share: 154 Units

Program Name	# Units
Rehab Credits	28
Rehab Program	126
TOTAL	154

²⁰ Projected Bonus Maximum: $.25(\text{Projected Growth Share})$ or $.25(233) = 58.25$ or 58 units N.J.A.C. 5:97-3.20

²¹ The number of residential COs (660) is divided by 5 to yield 132 units and the number of jobs (405) is divided by 16 to yield 25.3 units. Middletown's total estimated actual growth share is therefore 157 units $(132+25.3)$. **Note:** this estimate does not take into account allowable exclusions permitted under N.J.A.C. 5:97-2.5; therefore, the actual growth share may vary.

PRIOR ROUND SUMMARY

Prior Round Obligation: 1,561 Units

	Name of Mechanism	# Units/ Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Prior Cycle Credits	Credits without Controls	101			101
	Scattered Site Municipal Construction Program	2			2
	King's Row Senior Citizen Development	26			26
	Departmental Disabilities Association Group Home	4			4
Post-1986 Credits	Highlands Township RCA	50	-	-	50
	Long Branch City RCA	150	-	-	150
	Union Beach Township RCA	75	-	-	75
	Red Bank Township RCA	45	-	-	45
	Asbury Park City RCA	180	-	-	180
	Outlook America Group Home	4	Rental	4	8
	Brookside Group Home	4	Rental	4	8
	Collins Group Home	4	Rental	4	8
	Accessory Apartments	29	-	-	29
	Beacon Place inclusionary	28	Rental	28	56
	Chapel Hill inclusionary	30	Rental	30	60
	Park Ferry inclusionary	6	Rental	6	12
	Regency Park inclusionary	16	Rental	16	32

	Harmony Glen inclusionary	18	Rental	18	36
	Residential Over Commercial – Elgohail	12	Rental	12	24
	Wallace 100% Affordable Municipally Sponsored Project	5	Rental	5	10
	Luftman Pavilion	60	-	-	60
	Conifer Village	180	-	-	180
	Scattered Site Municipal Construction Program	23	-	-	23
	Laurel Greene inclusionary	24	-	-	24
	Cottage Gate	13	-	-	13
	Browns Landing	2	-	-	2
	Wallace Point 100% Affordable Municipally Sponsored Project	7	-	-	7
Subtotal		1098		127	1,225
Proposed Mechanisms	Mountain Hill Inclusionary	80	Rental	80	160
	Avaya Inclusionary	75	Rental	75	150
	Monarch/HUS group homes	8	Rental	8	16
	Community Options group home	4	Rental	4	8
	Accessory Apartment Program	2	-	-	2
Subtotal		169		167	336
TOTAL					1,561

GROWTH SHARE SUMMARY

Projected Growth Share Obligation: 233 Units

	Name of Mechanism	# Units/ Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Post-1986 Credits	Stavola Inclusionary Development	2	-	-	2
Subtotal		2		-	2
Proposed Mechanisms	Schwartz/Taylor Lane Inclusionary Development	72	-	-	72
	Steiner & Frustacci Inclusionary Development	35	-	-	35
	Meadowview Inclusionary Development	9	-	-	9
	199 Laurel Ave (Steiner) Inclusionary Development	9	-	-	9
	Atlantic Pier Inclusionary Development	8	-	-	8
	Accessory Apartment Program	21	-	-	21
	Market to Affordable Program	10	-	-	10
	Special Needs Housing-Coe	10	Special Needs Rental	3	13
	Residential Over Commercial Program: Mogas (12), Whirl (2), Rosen (8)	22	-	-	22
	Future Scattered Sites – Municipally Sponsored 100% Affordable Projects	15	-		15
	Future sites - Municipally	57	-	-	57

	Sponsored 100% Affordable Project –Family units				
	Future sites - Municipally Sponsored 100% Affordable Project-Age-restricted Units	58	-	-	58
	Future sites - Municipally Sponsored 100% Affordable Projects	7	-	-	7
Subtotal		333		3	336
TOTAL					338
Surplus					+105

III. FAIR SHARE DOCUMENT REVIEW

A. Development Fee Ordinance

Middletown's certified plan included a development fee ordinance that was adopted by the Township on November 22, 1993 and approved by COAH on January 11, 1995. Middletown submitted a draft amended development fee ordinance for COAH's review and approval with its third round petition. The amended development fee ordinance will be reviewed in a separate report.

B. Third Round Spending Plan

Middletown's prior round spending plan was approved by COAH on June 6, 1997. A revised third round spending plan was submitted by Middletown with the Township's third round petition for COAH's review and approval. The spending plan will be reviewed by COAH in a separate report.

The spending plan approval will be conditioned upon the Township providing the additional detail for the 2006 and 2007 legal expenses. Middletown has indicated that some of the expenses appear to be unrelated to the development or implementation of the Township's affordable housing plan. However, the Township indicates that some of the charges are valid. As such, until the additional detail is provided to COAH to determine whether the withdraws are

eligible expenses pursuant to N.J.A.C. 5:97- 8.7, Middletown has agreed to temporarily refrain from withdrawing additional funds from its affordable housing trust funds other than (1) charges that are contractually mandated for the production of affordable housing; or (2) any charges that are directly related to the Township's affordability assistance program.

Middletown's spending plan also acknowledges that administrative expenses withdrawn from the housing trust fund to date have exceeded the 20 percent limitation. To remedy the issue, Middletown will not withdraw administrative funds from the affordable housing trust fund until sufficient revenue is collected to satisfy the 20 percent administrative expense maximum limitation. Middletown's spending plan estimates that the Township will collect sufficient revenue by 2012 in order to satisfy the 20 percent administrative limitation. This request will be reviewed by COAH in a separate report.

C. Affordable Housing Ordinance/Affordable Housing Administration

Middletown Township has an adopted affordable housing ordinance for its prior round obligation. Middletown has submitted a revised draft affordable housing ordinance that comports with the requirements of the UHAC, which was amended on December 20, 2004, including compliance with the barrier free subcode of the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) and the accessibility requirements of N.J.S.A. 52:27D-123.15. The draft ordinance must be adopted within 45 days of COAH's grant of substantive certification and submitted to COAH immediately upon adoption.

An ordinance establishing the position of a municipal housing liaison was adopted by the Township on March 16, 2009, and a resolution appointing a municipal housing liaison was adopted by the Township on April 20, 2009.

Middletown is responsible for the continued re-sale and re-rental of existing affordable units and the initial sale and rental of newly constructed affordable units within the Township and must designate an experienced administrative entity for that purpose. The group homes are administered by the special needs providers. The Affordable Housing Alliance administers the units at Beacon Place and Park Ferry. The Alliance will also be the administrator of the 12 units at Wallace. Conifer Realty is the administrator of Conifer Senior Housing. D&M Property Management is the administrator of Village at Chapel Hill. Luftman Pavillion is the

administrator of Lincroft Senior Citizen Housing Corporation. Middletown has an in-house administrative agent who administers the remaining affordable units.

Middletown has submitted operating manuals for its Accessory Apartment and Market to Affordable Programs.

D. Affirmative Marketing Plan

Middletown has submitted an affirmative marketing plan. The affirmative marketing plan will be reviewed for conformance with the requirements of the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 *et seq.*, to ensure the units in the Township's 1987-2018 Fair Share Plan and all future affordable housing units will be affirmatively marketed to the region upon initial sale/rental and re-sale/re-rental. Once approved by COAH, the affirmative marketing plan must be adopted by resolution by the Township within 45 days of COAH's grant of substantive certification and submitted to COAH.

IV. SUMMARY OF MEDIATION

A. Objections

COAH received two objections to Middletown's third round plan. Stephen Eisdorfer Esq., of Hill Wallack, and David N. Kinsey, PP/AICP, of Kinsey & Hand, filed an objection on behalf of Bamm Hollow, LLC. Gary E. Fox, Esq. of the law firm Fox & Melofchik, LLC, filed an objection on behalf of Mountain Hill, LLC. The objections are summarized in COAH's July 28, 2009 Pre-Mediation Report Requesting Additional Information. The municipal response from Middletown is summarized in COAH's August 24, 2009 Pre-Mediation Report Addendum.

B. Mediation

Mediation between the Township and Bamm Hollow took place in COAH's offices in Trenton on August 25, 2009. The mediation session did not result in an agreement between the parties.

Mediation did not take place between the Township and Mountain Hill. On September 24, 2009, Middletown and Mountain Hill entered into a developer's agreement. Thereafter, on September 24, 2009, Mountain Hill withdrew its objection.

Mediation concluded on August 25, 2009. The Mediation Report, dated September 24, 2009, is attached hereto as Attachment 2. The developers' agreements between the Township and Avaya and Mountain Hill are attachments to the Mediation Report.

V. COMMENTS

Adam M. Gordon, on behalf of Fair Share Housing Center (FSHC), submitted a letter dated June 1, 2009, commenting on Middletown's Fair Share Plan during the 45-day objection period. FSHC states that the letter is not intended as an objection to the Township's plan pursuant to N.J.A.C. 5:96-4.1; however FSHC does express concerns regarding the proposed inclusionary developments in Middletown's plan and rental bonuses that the Township is seeking.

FSHC submits that several inclusionary developments do not meet COAH's presumptive densities for inclusionary development. FSHC states that further explanation is required for the Schwartz Property, Avaya property and the Mountain Hill property. FSHC maintains that developers' agreements for these sites should also be provided. Also, FSHC states that Middletown is requesting rental bonuses for several developments that do not qualify for bonuses because there are no firm commitments for rental units. Lastly, FSHC notes that the Township has correctly not taken credit for a never completed RCA with Keansburg.

FSHC's comments have been addressed by the Township. There are executed developers' agreements with Avaya and Mountain Hill. The Township has removed its request for rental bonuses for the Schwartz/Taylor development. The Schwartz/Taylor site is now proposed to be developed at a gross density of 12 units per acre with a 20 percent set-aside, which is consistent with the presumptive density for rental units pursuant to N.J.A.C. 5:97-6.4(b)6i. Firm commitments have been provided for the projects that are receiving rental bonuses.

VI. MONITORING

Middletown must comply with COAH monitoring requirements as set forth in N.J.A.C. 5:96-11, including reporting the municipality's actual growth pursuant to N.J.A.C. 5:97-2.5. As indicated above, credits for built units will be validated and verified by COAH staff during

monitoring prior to the first biennial plan evaluation. It should be noted that credits for affordable housing programs and/or affordable units must be in compliance with N.J.A.C. 5:97-4. If the units are determined not to be eligible for credit, COAH will notify Middletown in writing and the Township may be directed to amend its certified plan to address the shortfall.

Pursuant to N.J.A.C. 5:96-10.1, COAH will conduct biennial plan evaluations upon substantive certification of Middletown's Housing Element and Fair Share Plan. The purpose of the plan evaluation is to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing. If upon any biennial review the difference between the number of affordable units constructed or provided in Middletown and the number of units required pursuant to N.J.A.C. 5:97-2.5 results in a pro-rated production shortage of 10 percent or greater, Middletown is not adhering to its implementation schedules pursuant to N.J.A.C. 5:97-3.2(a)4, or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, the Council may direct the Township to amend its plan to address the shortfall.

VII. RECOMMENDATION

COAH staff recommends that Middletown be granted third round substantive certification. COAH staff also recommends approval of the waiver from N.J.A.C. 5:80-26.3(b) for the bedroom distribution for the affordable units that will be constructed at Wallace Point. Middletown must adopt all necessary implementing ordinances, which includes the HUS ordinance, all zoning ordinances and the affordable housing ordinance, within 45 days of the grant of substantive certification and submit certified copies of the adopted ordinances to COAH within seven days of the adoption. In addition, the agreement between HUS and Middletown must be executed within 45 days after the grant of substantive certification and submitted to COAH.

Workbook A: Growth Share Determination Using Published Data

(Using Appendix F(2), *Allocating Growth To Municipalities*)

COAH Growth Projections

Must be used in all submissions

Municipality Name:

Middletown Township

Enter the COAH generated growth projections from Appendix F(2) found at the back of N.J.A.C. 5:97-1 et seq. on Line 1 of this worksheet. Use the Tab at the bottom of this page to toggle to the exclusions portion of this worksheet. After entering all relevant exclusions, toggle back to this page to view the growth share obligation that has been calculated. Use these figures in the Application for Substantive Certification.

	Residential	Non-Residential
1 Enter Growth Projections From Appendix F(2) *	1,149	3,731
2 Subtract the following Residential Exclusions pursuant to 5:97-2.4(a) from "Exclusions" tab	Click Here to enter Prior Round Exclusions	
COs for prior round affordable units built or projected to be built post 1/1/04	444	
Inclusionary Development	3	
Supportive/Special Needs Housing	10	
Accessory Apartments		
Municipally Sponsored	3	
or 100% Affordable	0	
Assisted Living	0	
Other		
Market Units in Prior Round Inclusionary development built post 1/1/04	987	
3 Subtract the following Non-Residential Exclusions (5:97-2.4(b))		
Affordable units	0	0
Associated Jobs		
4 Net Growth Projection	-298	3,731
5 Projected Growth Share (Conversion to Affordable Units Dividing Households by 5 and Jobs by 16)	0.00 Affordable Units	233.19 Affordable Units
6 Total Projected Growth Share Obligation		233 Affordable Units

* For residential growth, see Appendix F(2), Figure A.1, Housing Units by Municipality. For non-residential growth, see Appendix F(2), Figure A.2, Employment by Municipality.

Affordable and Market-Rate Units Excluded from Growth

Municipality Name: Middletown Township

Prior Round Affordable Units NOT included in Inclusionary Developments Built post 1/1/04

Development Type	Number of COs Issued and/or Projected
Supportive/Special Needs Housing	3
Accessory Apartments	10
Municipally Sponsored and 100% Affordable	3
Assisted Living	0
Other	0
Total	16

Market and Affordable Units in Prior Round Inclusionary Development

Built post 1/1/04

N.J.A.C. 5:97-2.4(a)

(Enter Y for yes in Rental column if rental units resulted from N.J.A.C. 5:93-5.15(c)5 incentives)

Development Name	Rentals? (Y/N)	Total Units	Market Units	Affordable Units	Market Units Excluded
Chapel Hill	Y	150	120	30	120
Gate Cottage	N	104	91	13	52
Regency Park	Y	110	94	16	91
Harmony	Y	90	72	18	72
Park Ferry & MHA	Y	30	24	6	24
Conifer	Y	180	0	180	0
Browns Fence	N	21	19	2	8
Wallace (for sale)	N	7	0	7	0
Wallace (for rent)	Y	5	0	5	0
Elgohail	Y	12	0	12	0
Avaya	Y	375	300	75	300
Mountain Hill	Y	400	320	80	320
Total		1,484	1,040	444	987

Jobs and Affordable Units Built as a result of post 1/1/04 Non-Residential Development

N.J.A.C. 5:97-2.4(b)

Development Name	Affordable Units Provided	Permitted Jobs Exclusion
		0
		0
		0
		0
Total	0	0

[Return To Workbook A Summary](#)

MIDDLETOWN MEDIATION REPORT

Middletown Township/Monmouth County

By,

Melissa J. Orsen

COAH Mediator

September 24, 2009

On August 25, 2009, mediation was held between representatives for Middletown Township (“Middletown” or the “Township”) and Bamm Hollow, LLC, an objector to Middletown’s Third Round Housing Element and Fair Share Plan (“HEFSP”), pursuant to an objected filed with the New Jersey Council on Affordable Housing (“COAH” or the “Council”). Appearing on behalf of the Township were the Mayor, Pamela Brightbill; Anthony Mercantante, P.P., A.I.C.P., Township Administrator; Jason Greenspan, P.P., A.I.C.P., Director of Planning; Cliff Raisch, Planning Board member; and Michael Jedziniak, Esq., Special COAH Counsel. Appearing for Bamm Hollow, LLC, was Steve Eisdorfer, Esq., Hill Wallack; David Kinsey, P.P., A.I.C.P., Kinsey and Hand; William Charpek; and Robert Keating. One mediation session was held.

Gary E. Fox, Esq., Fox & Melofchik, LLC, on behalf of Mountain Hill, also submitted an objection to Middletown’s Plan. Mountain Hill is included in Middletown’s Plan to construct 400 total units, including 80 family rental units. Mountain Hill noted in its objection that there were outstanding issues that needed to be addressed before it could proceed; however, Mountain Hill declined an invitation to attend mediation. On September 24, 2009, Middletown and Mountain Hill entered into a developer’s agreement. Also on September 24, 2009, Mountain Hill withdrew its objection.

OBJECTIONS AND RESPONSES

Middletown Township is continuing to address its prior round obligation of 1,561 units. Middletown has proposed to meet its entire 1999-2018 growth share projection of 233 affordable housing units through inclusionary zoning, supportive/special needs housing, accessory apartments, a market to affordable program, a “residential over commercial” program, municipally sponsored 100 percent affordable projects and associated bonuses.

Bamm Hollow has objected to the merits of the Township's HEFSP and instead proposes its site, approximately 277 acres, to be developed as inclusionary multi-family housing, in addressing Middletown's fair share obligation. The Township submitted its response to the objections, as summarized above in the Compliance Report; however, at mediation Bamm Hollow focused on its objections to Avaya/Four Ponds and Mountain Hill, as at that time, Middletown had yet to submit certain documentation from Middletown to support its other mechanisms.

Specifically, Bamm Hollow objected to Middletown excluding prior round sites from its affordable housing obligation, thereby reducing the overall affordable housing obligation. Bamm Hollow noted that the effect will be for Middletown to receive a reduction of its projected obligation from 463 to 233 affordable units for the market and affordable units that will be built on prior round projects, including, but not limited to Avaya/Four Ponds and Mountain Hill sites.

Further, in its objection, Bamm Hollow expressed doubt that the Avaya/Four Ponds and Mountain Hill sites created a realistic opportunity for affordable housing. At the time mediation took place, although there was an executed developer agreement with Avaya, the objector had not reviewed same. Also, an agreement with Mountain Lakes was not executed and submitted until September 24, 2009. Bamm Hollow argued that the densities on both sites are lower than COAH's presumptive densities at N.J.A.C. 5:97-6.4 and should not be permitted. Middletown noted in mediation that COAH's regulations allow the Township to exclude the prior round sites from its projection and that developer's agreements on both sites would be submitted within the 60 days provided in the Pre-mediation Report Requesting Additional Information, thereby complying with COAH's regulations. Middletown advised Bamm Hollow that the terms of the developer's agreements meet COAH's regulations and notwithstanding the lower density, Middletown's plan addresses its cumulative obligation. As noted, Middletown entered into agreements with both Avaya/Four Ponds and Mountain Hill (both agreements are attached to this report).

Bamm Hollow also objected to Middletown receiving rental bonuses for the Avaya/Four Ponds and Mountain Hill sites, as there was no evidence of a firm commitment at the time of

petition. Bamm Hollow had similar complaints over the Schwartz/Taylor Lane site¹, the supportive housing site and the 7-unit municipally sponsored program. At mediation, Middletown stated that the necessary information required under COAH's regulations would be submitted. As noted above in COAH's Compliance Report, Middletown submitted all of the information COAH requested in the Pre-mediation Report, including developer's agreements for Avaya/Four Ponds and Mountain Hill. The agreements satisfy COAH's requirement for a firm commitment pursuant to N.J.A.C. 5:97-6.4. Further, Middletown submitted evidence of a firm commitment on the other projects noted by Bamm Hollow; see Compliance Report.

Finally, Bamm Hollow objected to Middletown claiming 144 third round credits for a combination of scattered sites, a "residential over commercial" program and municipally sponsored 100 percent affordable housing projects that it believed were too vague and failed to create a realistic opportunity for affordable housing. The Township submitted to COAH supporting documentation for each of the noted mechanisms. See Compliance Report pages 27-28.

At mediation, the parties generally discussed the objections but noted that the information that was missing from the Plan and due to be submitted by Middletown would indicate whether Middletown had, in fact, submitted a Plan that could be certified without amendments. Bamm Hollow noted that it did not believe that the Township had met its obligation to provide realistic opportunities for low and moderate income housing, and questioned, in particular, whether the prior round sites continued to create a realistic opportunity for affordable housing. At mediation, Middletown maintained its position as it had in its response documents that it has provided COAH with a fully compliant affordable housing plan addressing its entire prior and third round obligation and, therefore, need not be required to include the Bamm Hollow site as a part of that plan. Nonetheless, Middletown indicated it would be amenable to discussing changes to the Bamm Hollow site, separate from the COAH process. Middletown was clear, however, that it

¹ As noted above, the Taylor Lane site is included in the Township's plan for 360 total units, which includes 72 affordable family rental units (the site was originally to produce 96 affordable rental units; however, the Township was unable to reach an agreement with the developer). The Township has removed its request for rental bonuses for the project. The site is proposed to be developed at a gross density of 12 units per acre with a 20 percent set-aside, which is consistent with the presumptive density for rental units pursuant to N.J.A.C. 5:97-6.4(b)6i.

wanted to proceed with the Plan before COAH and would not consider re-zoning the Bamm Hollow site at the densities being sought.

The parties agreed to continue to discuss the matter outside of the COAH process. A meeting between representatives of Middletown and Bamm Hollow is in the process of being scheduled.

MEDIATION OUTCOME

The mediation in this matter did not result in a settlement and the mediator does not believe that further mediation before COAH would result in a settlement being reached. At this point, Middletown has submitted a plan that addresses its cumulative affordable housing obligation and its projected growth share.

As such, mediation has concluded and the mediator finds that there are not any outstanding issues of material fact which necessitate referral to the Office of Administrative Law.

**COAH REPORT IN RESPONSE TO COMMENTS
RECEIVED REGARDING MEDIATION/COMPLIANCE REPORT
MIDDLETOWN TOWNSHIP/ MONMOUTH COUNTY
REGION #4
October 8, 2009**

During the 45-day objection period, COAH received two objections to Middletown's third round plan: Stephen Eisdorfer Esq., of Hill Wallack, and David N. Kinsey, PP/AICP, of Kinsey & Hand, on behalf of Bamm Hollow, LLC; and Gary E. Fox, Esq. of Fox & Melofchik, LLC, on behalf of Mountain Hill, LLC.

Mediation between the Township and Bamm Hollow took place in COAH's offices in Trenton on August 25, 2009. The mediation session did not result in an agreement between the parties. Mediation did not take place between the Township and Mountain Hill. On September 24, 2009, Middletown and Mountain Hill entered into a developer's agreement. Thereafter, on September 24, 2009, Mountain Hill withdrew its objection.

Bamm Hollow owns approximately 277 acres in Middletown, which is currently being used as a private 27-hole golf course and country club. Bamm Hollow's objection focused on the Township's Housing Element and Fair Share Plan and how Bamm Hollow believes that the plan does not provide a realistic opportunity for affordable housing. Bamm Hollow submitted that their objection may be resolved by negotiating an agreement that enables Bamm Hollow to develop inclusionary multi-family housing. A Pre-Mediation Report Requesting Additional Information and an Addendum to that report were issued by COAH on July 28, 2009, and August 24, 2009.

Mediation commenced on August 25, 2009, and concluded on August 25, 2009. A COAH Compliance and Mediation Report were issued on September 24, 2009. As noted in COAH's Compliance Report, Middletown submitted all of the information COAH requested in the Pre-mediation Report in order for COAH staff to recommend third round substantive certification.

During the 14-day comment period following the receipt of Middletown Township's Compliance Report, one comment was received from Stephen Eisdorfer Esq., of Hill Wallack, on behalf of Bamm Hollow. The comments do not alter the Compliance Report.

Bamm Hollow's Comments

On October 8, 2009, Bamm Hollow submitted comments to COAH on the COAH Compliance and Mediation Reports. Bamm Hollow claims that the Housing Element and Fair Share Plan, as supplemented by Middletown, does not create a realistic opportunity for affordable housing because many of the issues raised in Bamm Hollow's original objection remain unresolved. Bamm Hollow maintains that there are material factual issues that are unresolved or in dispute, that this is a contested case under the terms of the Fair Housing Act and the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Bamm Hollow requests that this matter be transferred to the Office of Administrative Law (OAL) for an adjudicatory hearing on those issues. Bamm Hollow submits the following:

1. Middletown's determination of its housing obligation is based upon an incorrect determination of the statewide obligation, as set forth in the briefs filed by Fair Share Housing Center, Inc., and the New Jersey Builders Association before the Appellate Division in the pending appeal in *In re Adoption of N.J.A.C. 5:96 and N.J.A.C. 5:97*.
2. Middletown improperly reduced its projected growth share obligation. Bamm Hollow maintains that Middletown is not eligible for reductions pursuant to N.J.A.C. 5:97-2.4, because Middletown would receive double credit for many of the excluded units. In addition, Bamm Hollow maintains that the exclusions under N.J.A.C. 5:97-2.4 are only applicable for municipalities that are substituting their own projections for those published by COAH in Appendix F.
3. Middletown's claim for credits for rehabilitation of units subsequent to 2000 and completed accessory apartments is unverified. Bamm Hollow argues that allowing Middletown these credits without an actual factual determination that the units are eligible for credit is improper under the Fair Housing Act as construed by the courts.
4. The 137 units of proposed future municipal housing projects do not create realistic housing opportunities. Bamm Hollow maintains that for a proposed project to be realistic there must be an actual site that satisfies COAH's site suitability standard, an identified developer, actual control of the site, actual commitments from the developer for sufficient funds to construct and operate the project, and a schedule from the developer

for actual construction. Bamm Hollow notes that these projects account for more than half of the very low income units for which Middletown claims credit-17 out of 30.

5. The Wallace Point project does not create realistic housing opportunities. Bamm Hollow argues that at this point the project does not have funding to actually construct the proposed housing units.
6. The Mountain Hill and Avaya inclusionary projects are zoned with densities below COAH's presumptive minimal density as established in COAH's rules and are, therefore, not realistic and should not be provided with rental bonuses. Bamm Hollow maintains that in order to determine whether any particular proposed development is realistic and practical at substandard densities, an economic analysis of the particular circumstances of that development is required. Bamm Hollow argues that an agreement with the developers is not a legitimate substitute for an economic feasibility determination.
7. The claim for rental credits for the Schwartz/Taylor Lane site is unjustified. Bamm Hollow claims that Middletown cannot claim rental credits for this development merely by zoning it 12 units per acre with a 20 percent set-aside. Bamm Hollow states that there must be a binding agreement from the developer that it will construct rental units. Bamm Hollow also states that it is unclear from the municipal submission whether this is an actual rezoning or merely the creation of an option in addition to other permitted uses.
8. Middletown cannot claim credit for the Meadowview inclusionary development, because it is an unsuitable site. Bamm Hollow states that the site is within the 100-year flood zone as designated by the federal government. Bamm Hollow states that it is improper to force low- and moderate-income households whose other housing options are limited, to accept such housing conditions. In addition, Bamm Hollow maintains that Middletown has not provided any economic analysis as to the effect of this additional requirement on the feasibility of this inclusionary development.
9. COAH cannot properly conclude that the proposed residential over commercial program provides a realistic opportunity for affordable housing. Bamm Hollow maintains that this depends upon whether the terms of the rezoning are sufficient to attract a developer. Bamm Hollow states that COAH has not adopted any regulations as to what zoning terms

create sufficient economic incentives to make it realistically likely that such zoning will actually result in affordable housing.

10. The Impact/OASIS project is student housing and does not qualify for credit. Bamm Hollow states that Impact/OASIS describes itself as an organization providing educational programs and as operating a private school. Bamm Hollow states that Impact/OASIS provides housing on-site for the individuals selected for this educational program and the housing will be operated in a manner fully integrated with the educational and vocational program. Therefore, the housing is not available to the general population.
11. The mechanisms that Middletown is using to address its very-low income obligation are unrealistic. Bamm Hollow states that of the 36 claimed units, 24 are sales units. Bamm Hollow argues that it is impossible for very-low income households to qualify for mortgages and to secure down payments to purchase housing without a down payment program or a guarantee of mortgages by the Township.

Bamm Hollow also provided comments on the COAH Mediation Report. Bamm Hollow states that the description of Bamm Hollow's objections was incomplete. In addition, Bamm Hollow maintains that there never were any good faith negotiations between Middletown and Bamm Hollow under the Fair Housing Act.

COAH's Response

- 1 & 2: Points 1 & 2 made by Bamm Hollow are challenges to COAH's regulations. Pursuant to N.J.A.C. 5:96-4.1, the Council shall not consider any objections regarding its rules and regulations as a valid objection. In addition, as Bamm Hollow notes, these issues are raised in the pending appeals. The Appellate Division has jurisdiction over these issues and therefore, they are not within the jurisdiction of the OAL. Furthermore, N.J.A.C. 5:97-2.4 does not solely apply to municipalities that are submitting their own growth projections.

3. Pursuant to N.J.A.C. 5:97-4.1(d), all credits shall be subject to verification and validation when a municipality petitions for substantive certification, or during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.
4. Pursuant to N.J.A.C. 5:97-6.7(d), municipalities are required to provide the documentation listed in N.J.A.C. 5:97-6.7 with the municipality's petition for substantive certification or in accordance with the municipality's implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4. Pursuant to COAH's regulation, Middletown is allowed to phase the future municipally sponsored projects. Pursuant to N.J.A.C. 5:97-3.2(a)4, the municipally sponsored projects are not addressing the rehabilitation obligation, prior round or actual growth share obligation to date or the obligation up to the first plan review.
5. Middletown has submitted that the Affordable Housing Alliance is currently seeking funding for the project. Pursuant to N.J.A.C. 5:97-6.7(d), construction of the Wallace Point project must begin within two years of substantive certification because it is not a phased project. COAH will monitor the status of the construction at Middletown's first plan review. If within two years the project is still not constructed, Middletown will be required to amend its plan to replace the units.
6. COAH does not require an economic analysis to determine if an inclusionary project that is zoned below the presumptive densities is feasible. Pursuant to N.J.A.C. 5:97-6.4(b)3, COAH shall generally accept such zoning as providing a realistic opportunity for the creation of affordable housing when at least one of the conditions in the rule is met. One of these conditions is that the municipality has submitted a fully executed agreement between the municipality and the developer setting forth mutually agreed to terms for the production of the required affordable housing. Middletown has submitted developer's agreement with both Mountain Hill and Avaya agreeing to the reduced densities.
7. COAH does not require an agreement from a developer that it will construct rental units. Pursuant to N.J.A.C. 5:97-6.4(b)6, COAH shall generally accept such zoning as providing a realistic opportunity for the creation of affordable rental housing when at least one of the conditions in the rule is met. One of these conditions is that the inclusionary zoning permits a presumptive minimum density of 12 units per acre and a

presumptive maximum affordable housing set-aside of 20 percent of the total number of units in the development. The draft inclusionary zoning provided by the Township for the Taylor site does not provide an option for a different density. The site will be zoned at 12 units per acre with a 20 percent set-aside.

8. COAH's regulations do not prohibit an affordable housing project from being constructed within a 100-year flood zone. The Meadowview inclusionary project will be required to comply with all DEP regulations and municipal ordinances regarding the design of the project.
9. N.J.A.C. 5:97-6.15 allows municipalities to propose innovative programs or mechanisms to address its affordable housing obligation. In addition, the program has already created 12 affordable family rental units, and numerous other projects are already in the works, as described in the Compliance Report. Furthermore, the Township provides a per unit subsidy for this program of \$23,000 for each low-income unit produced and \$17,000 for each moderate-income unit produced. COAH staff feels that this innovative program creates a realistic opportunity for affordable housing.
10. COAH's rules on special needs/supportive housing projects do not preclude the type of program that Impact/OASIS is proposing. Pursuant to N.J.A.C. 5:97-6.10(d), the bedrooms and/or units are exempt from the Uniform Housing Affordability Control's (UHAC) affirmative marketing requirements. (N.J.A.C. 5:80-26.15). However, group homes, residential health care facilities, permanent supportive housing and supportive shared living housing shall be affirmatively marketed to individuals with special needs in accordance with a plan approved by COAH's Executive Director.
11. Middletown's approved spending plan requires that \$2,534,910 be used for affordability assistance, including \$836,520 to render units more affordable to households earning 30 percent or less of median income by region. The Township will expend its affordability assistance funds on closing costs, down-payment assistance, rental assistance, and converting low-income units to very-low income. In addition, the Township currently has an Affordable Housing Homebuyer Assistance Program in place that provides secondary financing to income qualified households. Pursuant to N.J.S.A. 52:27D-329.1, COAH will review municipal housing activities, at least once every three years, to ensure

that at least 13 percent of the housing units made available for occupancy by low-income and moderate income households will be reserved for occupancy by very-low income households.

With regard to Bamm Hollow's allegations that the Mediation Report did not sufficiently summarize their objections to Middletown's Housing Element and Fair Share Plan and that Middletown did not negotiate in good faith, COAH staff reviewed every objection submitted from Bamm Hollow and summarized the main objections discussed at the mediation session. The Township representatives met with Bamm Hollow to discuss its objections to its Housing Element and Fair Share Plan and have agreed to continue conversations with respect to Bamm Hollow's property, separate from the COAH process. In fact, a meeting between Bamm Hollow and the Township is scheduled for October 9, 2009.

Therefore, as discussed in the COAH Compliance Report, Middletown's plan comports with COAH regulations. In addition, the mediator concluded that there are not any outstanding issues of material fact which necessitate referral to the Office of Administrative Law.